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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/740,263	12/18/2003	Matthias Boldt	84-03	1909
37158	7590	09/13/2004	EXAMINER	
JOSEPH E. CHOVANES SUITE 329 5 GREAT VALLEY PARKWAY MALVERN, PA 19355			REYES, HECTOR M	
			ART UNIT	PAPER NUMBER
			1625	

DATE MAILED: 09/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/740,263

**Applicant(s)**

BOLDT, MATTHIAS

**Examiner**

Hector M Reyes

**Art Unit**

1625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### Status of The Claims

Claims 1-13 are currently under Examination.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 7-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Thomson, US patent 6211407 (2001).

Thomson discloses citrate salt of dicreatine and tricreatine and a method for the preparation of the same.

Thomson anticipates claim 1 because Thomson's dicreatine citrate salt comprises two creatine cations per citrate dianion while the tricreatine citrate salt comprises three creatine cations per citrate anion, see column 1, lines 58-63.

Thomson prepares the said salts by reacting citric acid with an excess of creatine monohydrate using methanol as solvent and followed by drying the product obtained, see Examples 1 and 2. Thus Thomson anticipates instant claims 7-9.

Art Unit: 1625

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 2-6 and 10 -13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thomson, US patent 6211407 (2001).

As indicated above, Thomson discloses citrate salt of dicreatine and tricreatine and a method for the preparation of the same.

Thomson's dicreatine citrate comprises two creatine cations per citrate dianion while the tricreatine comprises three creatine cations per citrate anion, see column 1, lines 58-63.

Regarding the claims 10-13, Thomson prepares the said salts by reacting citric acid with an excess of creatine monohydrate using methanol as solvent and followed by drying the product obtained.

Art Unit: 1625

Thomson however does not disclose the use maleic, malic or fumaric acid as the required multi-acid in the disclosed method in order to obtained the corresponding dicarboxylate or tricarboxylate creatine salts.

However, Thomson teaches that ***creatine monohydrate can be used to manufacture various salts, for example citric and maleic acid***, see column 1, lines 31-34.

Moreover, the disclosed salts are ***directed to provide creatine forms that is stable and that prevent or impede the conversion of creatine to creatinine by providing a different salt that the monocreatine salt***, see column 1, lines 52-55.

Consequently, it would have been obvious to a person of ordinary skills in the art at the time the claimed invention was made and within the meaning of 35 USC 103, to prepare the di- and tri-creatine salts by following the procedure already taught by Thomson but using different polycarboxylic acids in place of citric acid. A person with ordinary skills in the art would immediately recognize that the mere substitution of a dicarboxylic acid by another, would render an stable salt as suggested by Thomson and that the said salt would satisfy the said utility as the citrate di-and tri-creatine salts, as shown already by Thomson.


### **CONCLUSION**

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Hector M. Reyes, whose telephone number is (571) 272-0691. The Examiner can normally be reached Monday through Friday from 9:30 to 5:30pm.

Art Unit: 1625

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor Ms. Rita Desai can be reached at (571) 272-0684.

Hector M. Reyes, PhD JD  
Reg # P-54,846  
AU 1625  
September 4, 2004



PAUL J. KILLOS  
PRIMARY EXAMINER